DECOLONISING INDIGENOUS VICTIMISATION

Chris Cunneen
Cairns Institute
James Cook University

Simone Rowe
Cairns Institute &
School of Arts and Social Sciences
James Cook University

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> There is no form of knowledge to which we can attribute, in general, an epistemological privilege… There is no global social justice without global cognitive justice.
> (Boaventura de Sousa Santos, in Dalea and Robertson 2004, pp. 58-60).

This chapter is part of a broader project we refer to as the "penal/colonial complex"; a project that seeks to delineate, de-centre and challenge the dominant mechanisms through which law, policy and practice continue to subjugate Indigenous peoples, their cultures and knowledges (Cunneen et al. 2013, pp. 186-187; Cunneen and Rowe 2014). We see the need to de-centre victimology at both a theoretical and policy level as an important component of the broader project. Our intentions in this chapter are fivefold: to consider the current status of the victimisation (and, we argue, concomitant criminalisation) of Indigenous peoples in postcolonial western settler societies; to establish the limitations of Eurocentric victimological approaches to understanding this phenomenon; to clarify how an alternative critical Indigenous analytic framework can transgress these limitations; to contrast Indigenous and state policy responses to Indigenous victimisation; and thereby establish the analytical and decolonising[i] significance of critical Indigenous approaches.

Introduction: Indigenous victimisation

In the postcolonial western settler societies of Australia, Canada, New Zealand and the USA, Indigenous peoples are grossly overrepresented as victims[ii] of crime. In Australia, rates of violent victimisation for Indigenous peoples are two to three times higher than for non-Indigenous Australians; the rates are four to six times higher in the case of family violence (AIC 2013). In Canada, some 35 per cent of Aboriginal people report being a victim of crime, compared to 26 per cent of non-Aboriginal people. Aboriginal Canadians are nearly three times more likely to be victims of violent crime than non-Aboriginal Canadians; they are five times more likely to be the victims of sexual offending (Department of Justice Canada 2012).

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In New Zealand, numerous surveys have shown that Maori peoples are more likely to be victims of a violent crime than non-Maori peoples (Statistics New Zealand 2010, pp. 20-30). And in the USA, rates of violent victimisation, for both males and females, are higher among Native Americans than for any other racial or ethnic group (CFCC 2012, p. 1).

Indigenous women's victimisation rates are particularly high. To take Canada for example, Aboriginal women are 3.5 times more likely than non-Aboriginal women to be victims of violence. For Aboriginal women between the ages of 25-44, they are five times more likely to die as a result of violence (Wesley 2012, p. 5). Violence against Aboriginal women in the home is prevalent: spousal violence against Aboriginal women and girls in Canada is more than three times higher than for other Canadian women; Aboriginal women are eight times more likely to be a victim of spousal homicide (HRW 2013, p. 25; Wesley 2012, pp. 5-6). Similarly in Australia, Indigenous women are disproportionately represented as victims of crime: they are more than ten times more likely to be a victim of homicide than other women; 45 times more likely than non-Indigenous women to be a victim of domestic violence; and more than twice as likely to be the victim of sexual assault (ATSISJC 2006, pp. 337-341).

In the context of victimisation, one must also consider the over-representation of Indigenous children in child protection systems. In Australia for example, Indigenous children are more likely to be the subject of a notification to a child protection agency (the rate is nearly six times greater than non-Indigenous children); their cases are much more likely to be substantiated after a child protection agency investigation (the rate is eight times greater than non-Indigenous children), and they subsequently have much higher rates of removal from their family and placement in care (at a rate 11 times higher than non-Indigenous children). It is also important to recognise that these rates have been increasing over the last decade (SCRGSP 2014, pp. 15.12-15.15). Similarly in Canada and the USA, evidence suggests that Native American children are disproportionately represented among child welfare reports, investigations, and

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out-of-home placements (Fallon et al. 2013, p4. 48-49). In the USA, despite representing just one per cent of the urban child population, urban Native American children under the age of 18 represent two per cent of all children placed in out-of-home care. This disparity is much higher in particular States (Carter 2010, p. 657).

Coinciding with an increased awareness of Indigenous victimisation rates has been the growth in Indigenous criminalisation and incarceration. Over the last two decades, the Australian Indigenous imprisonment rate has doubled, while the non-Indigenous rate has been both significantly lower and increasing at almost half the Indigenous rate (Baldry and Cunneen, 2014). There is evidence to suggest that the high levels of over-representation of Indigenous peoples in prison in Canada, the USA and New Zealand have remained constant or worsened over recent years (Cunneen 2014, p. 389).

Of particular interest in the context of the current chapter is the extraordinary growth in Indigenous women's imprisonment rates, which has far outstripped the growth in Indigenous male imprisonment rates. It is a phenomenon explored by a growing number of critical scholars (see for example: Baldry and Cunneen 2014; Pollack 2013; Dell and Kilty 2013; Marchetti 2013; Ross 1998, 2004; Stubbs 2011). From these explorations several key theoretical insights have emerged, including: the inextricable connections between the categories of race, gender and class (see for example: Ross 1998, p. 264); the related importance of a nuanced intersectional analysis (see for example: Stubbs, 2011, p. 59); the enduring underestimation of the effects of colonisation, patriarchy and violence on the lives of victimised, criminalised and incarcerated Indigenous women (see for example: Baldry and Cunneen 2014); and the significance of the feminist notion of the victimisation-criminalisation continuum in explaining the over-representation of Indigenous women, both as victims and offenders (see for example: Pollack 2013).

All of the above insights are important, however with respect to understanding the over-representation of Indigenous women *and* men, both as victims *and* offenders, we wish to highlight the analytic significance of the victimisation-criminalisation continuum[iii]. To clarify, while we acknowledge the importance of the increasing emphasis on the disproportionate victimisation and criminalisation of Indigenous women, our focus henceforth is on the disproportionate contact of *both* Indigenous women and men with the criminal justice system; an issue all too frequently neglected in the theory and practice of victimology. In relation to Indigenous men and women, evidence continues to suggest that the separation between the categories of victim and offender are not at all clear. "In reality many Indigenous people in the criminal justice system are both offenders and victims" (ATSISJC 2002, p. 149). The analytic importance of this concept becomes especially salient when one broadens current conceptualisations of Indigenous victimisation beyond the narrow confines of *criminal* victimisation, a practice we argue that is crucial to understanding and responding to the broader victimisation of Indigenous peoples. Indeed it is only when we broaden our focus beyond criminal victimisation that we begin to see how discriminatory, unjust and oppressive colonial processes are in fact a form of victimisation. Similarly, when one broadens the category of Indigenous criminalisation, we begin to see Indigenous peoples law-breaking not as an indication of their so-called criminality, but rather as resistance to ongoing colonisation (Blagg 2008; Cunneen 2001; Ross 1998). The continuing criminalisation of Indigenous peoples' survival strategies is thereby rendered problematic. Thus a critical stance on the causes and categorisation of Indigenous victimisation and criminalisation, and on the functions of criminal law in controlling Indigenous peoples is required. Achieving this aim, we contend, requires challenging the "epistemological privilege" (de Sousa Santos, in Dalea and Robertson 2004, pp. 58-60) of Eurocentric approaches.

This then is the principal agenda of our chapter, to advance critical consideration and analysis of the victimisation and criminalisation of Indigenous peoples living in postcolonial western settler societies. The discussion below unfolds in four

sections. First, we establish the limitations of dominant Eurocentric victimological approaches to understanding and responding to the complex forms by which colonisation continues to impact on the extraordinary over-representation of Indigenous peoples, both as victims and offenders. Building on the work of Indigenous scholars, we propose an alternative critical Indigenous analytic framework. The chapter proceeds by clarifying how a critical Indigenous lens can help decolonise hegemonic constructions of Indigenous victimisation and criminalisation by re-centring Indigenous peoples' worldviews, understandings and responses. We then contrast these with an analysis of an Australian Government response to Indigenous victimisation – a policy initiative commonly known as "The Northern Territory Intervention" (hereafter the 'NT Intervention'). We conclude that understanding and responding to the alarming rates of Indigenous victimisation demands recognition of critical Indigenous approaches, alongside a commitment to enhance Indigenous agency and control.

Limitations of Eurocentric victimology

Paul Rock (2012, p. 55) recently noted that "the poverty of victimological theory is a reiterated complaint" and there is much that victimological theory cannot and does not reveal. For the increasing number of Indigenous victims living and dealing with the consequences of ongoing colonisation, there is much that a mainstream Eurocentric victimological lens serves to conceal. This concealment is further exacerbated when public policy actively derides Indigenous voices – a point we return to later.

As a sub-discipline of criminology, victimology suffers from many of the same conceptual limitations underlying mainstream positivist/conventional approaches to the investigation of crime. Critical scholars have documented the broader conceptual limits of mainstream criminological and victimological approaches for at least four decades (see for example: Cunneen and Rowe 2014; Taylor et al. 1973; Stubbs 2008; Walklate 1990). Rather than rehearse these here we wish to focus on the comparatively less developed conceptual restraints arising from the

assumed superiority of Eurocentric approaches to the investigation of the victimisation and criminalisation of Indigenous peoples.

As many Indigenous and non-Indigenous scholars have argued, paradigm change is crucial to transgressing Eurocentric conceptual frames (see for example: Denzin and Lincoln 2008; Cunneen and Rowe 2014; Kincheloe 2006; Moreton-Robinson 2009; Moreton-Robinson and Walter 2009). Such change can occur only when colonisation is brought "front and centre and named as the root cause" of Indigenous overrepresentation, both as victims and offenders (McCaslin and Breton 2008, p. 518). As Dipesh Chakrabarty (2006, p. iv) argues "the colonial model" should not be abandoned; it remains crucial to making sense of the position of Indigenous peoples.

While the process in which colonisation occurred, and ultimately impacted the Indigenous peoples of Australia, Canada, New Zealand and the USA differed in some respects (see for example: Marchetti and Downie 2014, pp. 362-366), there are also manifold commonalities in the experiences of Indigenous peoples in western settler societies derived from English common law traditions (Cunneen 2014, pp. 386-387). A significant part of this shared experience stems from the history of colonisation and the profound disruption caused to pre-existing traditional societies. In short, *every* part of Indigenous society was attacked during the colonial process. The long history of confining and imprisoning Indigenous peoples in Australia, Canada, New Zealand and the USA, denying their civil and political rights, and controlling behaviour both through and outside the law is far from finished. Rather, as Indigenous scholar Aileen Moreton-Robinson (2009, p. 11) explains: "Colonisation has not ceased to exist; it has only changed in form from that which our ancestors encountered".

Perhaps one of the most under-explored forms through which colonisation continues to occur in criminological and victimological discussions of Indigenous peoples is that of the epistemic violence (Spivak 1995, pp. 24-25) arising from entrenched beliefs in the superiority of Eurocentric epistemologies, and the

concomitant marginalisation of the "subjugated knowledges" (Foucault 1980, pp. 81-85) of Indigenous peoples. In the context of continuing colonisation, epistemic violence, or the violence of knowledge operates "not by military might or industrial strength, but by thought itself" (Chatterjee 1986, p. 11). In the case of criminalised and victimised Indigenous peoples, the epistemic violence that occurs through the ongoing imposition of western conceptual frames on Indigenous contexts "risks reproducing the very colonial discourse we might have set out to unseat" (Blagg 2008, p. 201).

The imposition of the dominant Eurocentric episteme to the issue of domestic violence in Indigenous contexts exemplifies this concern. Understanding the inappropriateness and inadequacy of these initiatives requires recognising the incongruity between Indigenous and western ontological understandings of the self. Indigenous peoples understand the self as being centrally defined by relationships to kinship groups and the natural world. Western understandings by contrast generally see the nature of self in an individualised and autonomous context (Moreton-Robinson and Walter, 2011; Wilson, 2001). Often Indigenous people define domestic violence in the broader and relational concept of *family violence*, a term reflective of the centrality of the relationality to Indigenous worldviews (for a discussion of the distinction see Memmott et al. 2001, p. 34). Nevertheless, Eurocentric domestic violence law and policy imposed in Indigenous contexts is often predicated on an incongruent ontological and epistemological reality; a reality based on the potential for autonomous and individualised decision-making.

Another important example is the difference between western and Indigenous concepts of self-determination: from a western perspective self-determination is usually viewed as an individual concern; from an Indigenous perspective, self-determination is usually viewed as a collective concern (Green and Baldry 2008, pp. 398-399). It is also seen as a fundamental collective human right, as evidenced in the United Nations *Declaration on the Rights of Indigenous Peoples* 2007. Again, such differences have important implications for the development of specific public

policy responses to both victimisation and criminalisation. Criminal justice policies must begin with recognition of this fundamental human right if they are to be aligned with the broader political and social imperatives of Indigenous peoples. As discussed in the ensuing section on the NT Intervention, Indigenous responses rooted in these understandings continue to be marginalised by state policy initiatives.

We argue that the silencing of Indigenous worldviews, voices and perspectives through the imposition of Eurocentric conceptual frames has been central to perpetuating an image of Indigenous dysfunction and reproducing the assumed "criminogenic" features of Indigenous peoples through various "risk" technologies. As exemplified in Pollack's (2013, p. 107) critical analysis of racialised women in correctional systems in Canada, epistemic violence also occurs through the eradication of the "perspectives and subjectivities of criminalised women whose experience of self, criminalisation and imprisonment may not be measurable through the ideological tools of evidence-based research and practice".

However the Eurocentric victimological imagination is limited not only by its failure to conceptualise and interrogate the impact of ongoing colonisation (both in its practical and epistemological manifestations); rather, as we noted earlier, it is restricted also by its inability to conceptualise and interrogate the complex forms of victimisation to which Indigenous peoples are subjected. So, when viewed through a Eurocentric victimological lens, the focus remains almost exclusively on Indigenous peoples as victims of crime. Alternative categories of victimisation - such as the victimisation of Indigenous peoples through the continued denial of their sovereign and human rights by the state (a point to which we return) – are largely ignored. It is such limitations we argue that call for a de-centring of Eurocentric constructs and knowledge from their privileged place at the centre of all inquiry, and a re-centring of the subjugated knowledges of Indigenous peoples.

An alternative analytic framework: critical Indigenous approaches

As a mode of analysis stemming from the work of Indigenous scholars, critical Indigenous theory "offers the possibility for a transformative agenda" (Smith 2005, p. 88); an agenda that "necessarily speaks to Indigenous people living in postcolonial situations of injustice" (Denzin and Lincoln 2008, p. xii). Critical Indigenous approaches can, we contend, be put to advantage by non-Indigenous and Indigenous victimologists to interrogate and explain how colonialism connects to the neo-colonial social worlds where Indigenous men and women continue to be both victimised and criminalised. As the Indigenous scholar Jelena Porsanger (2004, p. 109) makes clear, Indigenous approaches do not reject non-Indigenous researchers and scholars, nor do they simply reject Western canons of academic work. Furthermore, we suggest that critical Indigenous scholarship is fundamental to decolonising dominant understandings and responses to the disproportionate over-representation of Indigenous victimisation. The ensuing discussion considers salient features of critical Indigenous approaches relevant to our focal concern: the extreme over-representation of Indigenous peoples, both as victims and offenders.

As we suggested earlier, the "colonial model" is crucial to conceptualising and explaining the extraordinary rates of Indigenous victimisation. Problematising the enduring role that colonising processes continue to have in the lives of Indigenous peoples is also fundamental to critical Indigenous inquiry (see for example: Denzin and Lincoln 2008; Sherwood 2010; Moreton-Robinson and Walter 2011; Smith 2012). Taking colonialism as our point of departure, and thereby coming to terms not only with the specificity of Indigenous peoples as colonised peoples, but also the vested interest of neo-colonial institutions in maintaining their dominant role vis a vis Indigenous peoples, has significant ramifications for how we understand Indigenous victimisation. This is especially so in relation to the dominant representations and interpretations of violence in contemporary Indigenous communities.

In recent years the problem of violence in Indigenous communities has attracted considerable focus in Australia, New Zealand and North America, as have the corresponding high levels of violent victimisation, and the high rates of violent offences of Indigenous men and women (see for example: Blagg 2000; CFCC 2012; Bartels 2012; Davis 2000; Deer 2004; Human Rights Watch 2013; Macklin and Gilbert 2011; Memmott et al. 2001; Ramirez 2004). It is well understood that violent behaviour involving Indigenous people (including homicide and serious assaults) is most frequently directed toward intimates rather than strangers, more often than is the case in non-Indigenous communities (Memmott 2001; Chan and Payne 2013, p.20). A preoccupation with measuring Indigenous violence means that there is no shortage of statistical data pertaining to Indigenous peoples' "problem" with violence (as was demonstrated in the earlier sections of this chapter).

The pathologising and individualising discourses that flow from this data subsequently inform various policy initiatives that continue to negatively impact Indigenous communities. For example, the plethora of uncritical interpretations of such data has been central to the mainstreaming of Indigenous violent offenders in criminal justice treatment programmes. These programmes are chiefly underpinned by the Eurocentric belief in Cognitive Behavioural Therapy [CBT] and are overwhelmingly designed for non-Indigenous violent offenders. Ontologically, CBT is premised on the notion of western cartesianism that separates the individual from the natural world (Kincheloe 2006). This is a position entirely antithetical to an Indigenous ontology that privileges the importance of relationality. Unsurprisingly evidence continues to suggest that such programs fail to address the unique circumstances and needs of Indigenous offenders (see for example: Bartels 2012; Day et al 2006; Lawrie 2003; Stubbs 2011; VEOHRC 2013).

Through a critical Indigenous lens, the problems associated with quantifying Indigenous violence through Eurocentric scientific frames are made manifest. As Indigenous scholar Maggie Walter (2010) has revealed, the production, analysis

and presentation of statistical data pertaining to Indigenous concerns are not neutral interpretations of numerical accounts. Rather, "the unstated epistemological, ontological and axiological certainties of scientific frameworks have long been used by anthropologists, historians and others to bolster white possession and nullify Indigenous humanity under a carapace of objectivity" (Walter 2010, p. 52).

So in the case of statistical accounts of the "problem" of Indigenous violence, through a critical Indigenous lens one sees first how the production, analysis and presentation of such data inescapably renders invisible the impact of ongoing colonisation on the causation and perpetuation of such violence. Furthermore, a critical Indigenous analytic frame alerts one to the Eurocentric tendency to present and analyse the high rates of violent victimisation and violent offences of Indigenous peoples to an automatic rating of the problematic Indigenous "other" alongside that of the comparatively lower rates of violent victimisation and violent offences of non-Indigenous peoples; a process that inescapably has the effect of perpetuating a pejorative image of Indigenous dysfunction, and by consequence, the problematic Indigenous "other" (Walter 2010, pp. 51-52; see also: Jackson, 1995). This depreciatory effect is magnified by the comparatively smaller representation of Indigenous peoples in the general population. Finally, a critical Indigenous lens makes evident the problems ensuing from an over-reliance of data generated by non-Indigenous organisations (Tauri and Webb, 2012). Indeed, data on Indigenous violence, victimisation, criminalisation and incarceration continues to be sourced almost exclusively from non-Indigenous government-funded criminal justice institutions, the very institutions that have evolved to resolve the "Aboriginal problem" (Blagg 2008, p. 2). Caught within broader dominant epistemological frameworks, cultural values and political relationships, such institutions can be seen as complicit in reproducing Indigenous men and women as dysfunctional criminal subgroups (Blagg and Smith 1989, pp. 138-139; see also: Cunneen 2006). Thus whilst it is true that statistics do not lie, "neither do they always tell the same truth" (Walter 2010, p. 53). Rather, the political and

social reality of data is "framed by how they are garnered and interpreted, by whom, and for what purpose" (Walter 2010, p. 53).

In contradistinction, a critical Indigenous theoretical approach asserts the need to foreground the voices, worldviews, subjectivities and perspectives of Indigenous peoples (see for example: Moreton-Robinson and Walter 2011; Sherwood 2010; Smith 2012); a process through which an entirely different view of Indigenous peoples' so-called "problem" with violence, both as offenders and victims, is revealed. In the words of two victimised and criminalised Aboriginal Canadian women:

> There is no accidental relationship between our convictions for violent offences, and our histories as victims. As victims we carry the burden of our memories: of pain inflicted on us, of violence done before our eyes to those we loved, of rape, of sexual assaults, of beatings, of death. For us, violence begets violence: our contained hatred and rage concentrated in an explosion that has left us with yet more memories to scar and mark us (Aboriginal Justice Inquiry 1990, cited in Wesley 2012, p. 23).

Indeed violence was at the foundational core of the colonising process. Thus to analytically neglect the significance of the colonial model - the enduring impact of the history of terror, torture, violence and ill-treatment on the disproportionate numbers of victimised and criminalised Indigenous peoples - is to collude with the reproduction of colonising discourses. It is also to reinforce the dominant position of the coloniser vis a vis the colonised, a dominant position where "expert others" continue to speak and plan on behalf of victimised and criminalised Indigenous peoples living and dealing with the consequences of ongoing colonisation. As many Indigenous people have noted, when colonial violence, the genocidal propensities of colonial powers, the theft of land, dispossession, forced relocations, forced removals, and the mass control of Indigenous people through and beyond the law are properly considered, then the

answer to the questions “who is criminal?” “who is victimised?” and “what is justice?” take on a entirely different meaning (see for example: Barsh and Youngblood Henderson, 1976; Davis, 2000; Langton, 1992; O’Shane, 1992; Jackson, 1995; Ross, 1998; Tauri, 1998). Indeed, the criminalisation of Indigenous peoples’ resistance to colonisation continues to silence criticism of the complex forms by which neo-colonial powers continue to victimise Indigenous peoples through such factors as social and political exclusion, economic immiseration, and the denial of rights.

A brief example serves to elucidate these points further. It is well known that colonial authorities forcibly removed Indigenous children from their families in a direct effort to eradicate Indigenous culture and identity, and to remake citizens in the interests of colonial society. The effects of these policies have contemporary tangible outcomes in terms of victimisation and criminalisation. The inter-generational effects on many of those removed have included: the loss of culture; loss of parenting skills; mental illness; self-harm; unresolved grief and trauma; drug and alcohol problems; poorer educational and employment outcomes; criminalisation and further interventions by child protection agencies (see for example, NISATSIC 1997). The effect of colonial policies directly affects Indigenous people *irrespective* of whether they were personally removed. For example, it has been shown that some Indigenous women who have been subjected to domestic and family violence will not report the violence to state authorities because of a direct fear, if police are called, that their children will be removed by child protection agencies (Cunneen 2009, p. 326). It is a graphic example of how the effects of colonial policies structure contemporary Indigenous decision-making.

De-centring Eurocentric constructs and knowledge and privileging Indigenous worldviews offers a very different interpretation of “child protection”. Not a single submission to the Australian National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families “saw intervention by welfare departments as an effective way of dealing with

Indigenous child protection needs" (NISATSIC 1997, p. 454). Perhaps more important was the understanding by many Indigenous people that separation of Indigenous children from their land, culture and kin constituted emotional, physical and mental child abuse (NISATSIC 1997, pp.455-456). Put bluntly, privileging an Indigenous perspective completely inverts state classifications, statistics and responses to Indigenous "child protection". It is from this position that one begins to appreciate that it is not the colonisers but the colonised who are the experts in finding solutions to their "problems" (Briskman 2007, p. 3), a position all too frequently lacking in policy responses to Indigenous victimisation.

Responding to Indigenous victimisation and criminalisation

Blagg (2008, pp. 143-145) has identified a multiplicity of structural factors that continue to prevent mainstream criminal justice systems from responding appropriately to Indigenous victims. These include: embedded systemic racism; problematic constructions of Aboriginal criminality; massive under-reporting of Indigenous victims; the inappropriateness of Eurocentric models of victim support; and a lack of investment in Indigenous community-owned solutions. He notes that programs are "delivered on the whole by agencies that have no roots in the communities they serve, and in the capacity of what is – from an Aboriginal perspective – a wholly alien system of justice" (Blagg 2008, p. 143).

Indigenous and critical scholars and activists in western settler societies have repeatedly named the importance of Indigenous autonomy in decision-making and the right to self-determination as fundamental principles to engaging with the problems of victimisation and criminalisation. These fundamental principles have both epistemological and praxis implications for research and policy. How Indigenous people "know" violence in their communities impacts on the understanding of the causes and remedies for violence. In the first instance, as Native American scholar Ramirez (2004, p. 103) has argued it is important to use "Native rather than Eurocentric philosophy and viewpoints to begin to move beyond colonial hierarchies" in understanding Indigenous cultural approaches to healing both offenders and victims. Others have noted, "true justice and healing

will only be possible when the victims can seek accountability within their own judicial systems" (Deer 2004, p. 18; see also Ross 1998, p. 267). Deer goes on to argue that the laws and policies of the United States play "a significant role in the high rate of victimisation, because they have inhibited the ability of tribal communities to respond to and address crime in a culturally appropriate way" (2004, p. 19). The problems of state law and policy responses to Indigenous violence have been noted in Australia (for example, Cunneen 2011, 2014); we explore this further in the following section on the NT Intervention.

If we turn specifically to the question of violence against Indigenous women, Indigenous perspectives are largely based on different understandings and explanations for the violence. They thus demand differing law and policy interventions than mainstream approaches to domestic violence. Indigenous approaches do not necessarily rely on a criminalisation approach. Self-determination, community development and capacity building are all acknowledged as aspects to dealing with domestic and family violence. Furthermore, the acknowledgment of the links between colonial experiences of violence and contemporary violence are emphasized (ATSISJC 2002, p. 165; Cunneen 2011, p.322; Deer 2004, p. 25).

There is a perception that western criminal justice interventions are "extremely poor at dealing with the underlying causes of criminal behaviour and make a negligible contribution to addressing the underlying consequences of crime in the community" (ATSISJC 2004, p. 21). The failures of these interventions are manifold. They fail at the symbolic level because there is little or no ownership of the institutions (that is, they lack legitimacy); they fail by escalating the violence against women and children (imprisoned men return more damaged and violent); and they fail by continuing to separate Indigenous families (which is seen as an ongoing strategy of colonialism) (Cunneen 2011, p. 323).

The contrast between western and Indigenous ontologies and epistemologies, and the practical policy interventions that flow from these differing positions, can be

seen in the divergent responses to both victimisation and criminal offending. If we reflect on Indigenous developed interventions based on healing it is evident that they start at a different place to conventional programmes aimed at individualized victims and offenders:

> Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnectedness between, and the effects of, violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous peoples, families and communities (ATSISJC 2004, p. 57).

As we have explored in more detail elsewhere (Cunneen and Rowe 2014; Cunneen 2014, pp. 399-401), Indigenous programmes start with the collective Indigenous experience. Inevitably, that involves an understanding of the collective harms and outcomes of colonisation, including genocidal policies and practices, the loss of lands, the disruptions of culture, the changing of traditional roles of men and women, the collective loss and sorrow of the removal of children and relocation of communities. The continuum of victimisation and offending is not only understood as an outcome of disadvantage and marginalisation, it is also linked to non-economic deprivation "such as damage to identity and culture, as well as trauma and grief" (ATSISJC 2002, p. 136). Healing is not simply an individualised response. It is fundamentally about addressing trauma in a range of areas from the personal, social and inter-generational to the historical. Healing is quintessentially and simultaneously an individual and collective experience.

The Northern Territory Intervention: contemporary colonialism in action

Violence in Indigenous communities has become the focal point of governmental concern and in many cases the major rationale for significant shifts in criminal justice and social policy. We use the example of the Northern Territory Emergency Response[iv] (also commonly referred to as 'the Intervention') initiated

by the Australian government, as a contemporary example of "patriarchal white sovereign" power being used "to regulate and manage the subjugation of Indigenous communities" in the name of protecting Indigenous women and children from sexual assault and violence (Moreton-Robinson 2009b, p. 68).

Critical Indigenous theory provides a useful lens through which to consider contemporary understandings of violence and the nature of government intervention. In the governmental rhetoric surrounding the Intervention, Indigenous law and culture was presented as a significant part of the problem of violence. Indigenous women were presented as victims, and Indigenous men as inherently violent, thus confirming "the superiority of white men" (Watson 2007, p. 102). Aboriginal culture was presented as a largely worthless male-dominated collection of primitive beliefs – a view that evidenced the continuing pervasiveness of a patriarchal colonial consciousness (Cunneen and Baldry, 2014).

The government's legislative and policy response to violence against women and child abuse which underpinned the Intervention brought together particular racialised and gendered understandings of Aboriginality: "traditional" Aboriginal men were particularly to blame for abuse and violence, and Aboriginal women and children were seen as passive and hapless victims. Presented as a response to family violence in Indigenous communities, the Commonwealth *Crimes Amendments (Bail and Sentencing) Act (2006)*, restricted the courts from taking customary law into consideration in bail applications and when sentencing. The legislation drew an incontrovertible link between Indigenous culture and gendered violence. A raft of other legislation was introduced criminalising alcohol possession and consumption and possession of pornography in designated Aboriginal communities, as well as an increased police presence in many communities. As Moreton-Robinson (2009, p. 68) has noted the "impoverished conditions under which Indigenous people live [were] rationalised as a product of dysfunctional cultural traditions and individual bad behaviour"; Indigenous pathology was to blame for the situation of violence and abuse, "not the strategies and tactics of patriarchal white sovereignty". The construction of Aboriginal

culture in the NT as supporting violence and sexual abuse was the re-invention of a well-established colonial trope: Aboriginal people represented the "new barbarism" (Cunneen 2007).

The Intervention was also a clear example of Chatterjee's (1993) notion of the rule of colonial difference. Aboriginal people in the NT were placed outside the framework of civil society because of their racially-constructed difference. Their most important legal protection against racial discrimination, the Commonwealth *Racial Discrimination Act (1975)*, was suspended by parliament to allow the racially discriminatory aspects of the Intervention to occur without challenge to the courts. In a further sign of Aboriginal removal from civil society, the Australian military was used to support the Intervention. In addition to new forms of criminalization, various extensive forms of surveillance and control were introduced over a range of matters from medical records to school attendance to social security entitlements, all of which impacted on Indigenous women, men and children.

The immediate rationale for the Federal government intervention in the NT was the *Little Children are Sacred* report on Aboriginal child sexual assault. Similar reports, mostly written by Indigenous taskforces, had emerged around the same time in New South Wales, Western Australia, Victoria, and Queensland on Aboriginal child sexual assault and family violence (Cunneen 2007). What these Inquiries have in common is that they reiterate the importance of the following:

- The significance of Indigenous self-determination and developing negotiated responses to violence and abuse with Indigenous communities;
- Strengthening Indigenous culture is the answer, not the barrier, to improving the situation in relation to violence;
- Developing and extending Aboriginal law is part of the solution to the problem, and not a cause of the problem;
- The need to see the current problems of abuse and violence as directly connected to the trauma caused by successive colonial policies;

- The need to trust Indigenous families and communities to look after their own children;
- The need to re-engage Indigenous men (Cunneen 2007, p. 44).

In responding to the Intervention a coalition of Aboriginal organisations called for governments to identify, support and extend community capacities to respond to the issue of violence. In particular the organisations noted the opportunity to develop existing community-driven, but largely underfunded, initiatives such as Indigenous night patrols, safe houses, safe family programs, community justice groups, and mediation services (Cunneen 2007, p. 45). These demands by Aboriginal organisations in the NT were largely ignored.

The impact of the NT Intervention

A consistent criticism of the Intervention has been its suspension of human rights and its neo-paternalism (Altman 2007); a colonial strategy harking back to earlier approaches of direct and unambiguous racialised control of Indigenous peoples. In relation to human rights, there is little contention that the Intervention breached Australia's international human rights obligations, particularly in relation to the racial discriminatory aspects of income management, alcohol and pornography restrictions, the special powers of the Australian Crime Commission, and other matters (Anaya 2010, p. 45-49). More generally, Aboriginal people in the NT have subsequently reported increased levels of racial discrimination (Cunneen et al. in press).

However, the effects of a re-invigorated colonial approach to Indigenous people extend well beyond discrimination. And given the rationale for the Intervention was the protection of victimized women and children, what have been the consequences for them? We argue that in fact government policy has created a range of secondary victimization effects. Following the Intervention there was a new level of penal punitiveness in the NT. Imprisonment rates grew by 34 per cent between 2008 and 2012 (ABS 2012, p. 56). It is clear that the increase in imprisonment was *much greater* for Aboriginal women than men.[v] The removal of

Aboriginal children from their families by child protection agencies also escalated in the years following the Intervention (Northern Territory Government 2010, p. 21).

The Intervention introduced significant changes to social policy governed by increased state regulatory processes, such as housing tenancy leases, requirements around anti-social behaviour, school attendance, and social security income management. Indigenous people were ill-equipped to respond to these new demands, and the Intervention generated a raft of new legal and social problems for Indigenous people in the NT. Research has indicated that Indigenous women in particular have been negatively impacted upon because of these changes (Cunneen et al. in press). For example, in relation to housing, school attendance requirements, social security payments and income management, Indigenous women are *more likely* to identify a problem than Indigenous men (Cunneen et al. in press).

The Intervention showed clearly the denial of Indigenous knowledge and understanding of violence in their communities. It consistently subjugated the voices of Indigenous people and their demands for appropriate responses to Indigenous victims and offenders. Finally, it actively re-inscribed systems of domination and control through criminal justice and social policy that further marginalized, institutionalised and criminalised the very victims it ostensibly set-out to save: Indigenous women and children.

Conclusion

The inadequacy of dominant Eurocentric approaches to understanding and responding to the over-representation of Indigenous peoples, both as victims and offenders, indeed confirms that the "masters tools will never dismantle the master's house" (Lorde 1984, in Denzin 1997, p. 53). Rather, the pressing quest to delineate, de-centre and challenge the epistemological privilege of colonizing paradigms and processes demands that paradigms shift. As inferred by our use of de Sousa Santos' quote at the beginning section of our chapter, achieving global

social justice for the growing number of victimised and criminalized Indigenous peoples rests upon achieving global cognitive justice. In other words, for laws, policies and practices to shift we need to re-inscribe an Indigenous understanding of the world.

We argue in conclusion that such a re-inscription requires at a minimum three features.

There is a need to foreground an understanding of the *coloniality of power*[vi] which is both implicit and explicit in governmental responses to Indigenous peoples' victimisation and criminalisation. There is also a requirement to understand how the coloniality of power influences Indigenous peoples' reactions to the way the state defines and responds to victimisation and criminalisation. Alternative and broader categories of victimisation are important, in particular in relation to the role of colonial states in abrogating Indigenous human rights.

There is a need for a much deeper understanding of Indigenous ontologies and the way the "self" is understood in connectivity to the social, physical and spiritual world. The centrality of inter-relationality to Indigenous worldviews means that the understandings of particular situations and contexts, and the decisions which people make, are formed from within a worldview that is in strong contrast to colonising assumptions regarding individual decision-making based on autonomous self-interest.

Finally, there is a need to respect Indigenous political demands for self-determination. Understanding self-determination requires cognisance of the scepticism which many Indigenous people have in the ability of the colonial state to deliver just outcomes. The demand for self-determination is a demand for greater control in decision-making over how best to deal with problems of crime and victimisation that beset many communities. Self-determination in this context also requires a move away from linking victimisation and criminalisation with portrayals of Indigenous dysfunction to seeing problems through the definitions of Indigenous people themselves. In this way academics and allies to Indigenous

people become not experts; rather, they become facilitators who assist in the promotion of Indigenous peoples' knowledges, voices, perspectives and aspirations for social justice and self-determination.

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[i] Throughout this paper, the term *decolonisation* is used in its broadest sense to denote the unmasking and deconstruction of imperialism, both in its old and new formations, alongside a search for sovereignty, for reclamation of knowledge, language and culture, and for the social transformation of the colonial relations between the colonised and the coloniser (Smith 2005, p. 88). We use the term *decolonizing victimization* to refer to the many critical, emancipatory and reflexive analytic processes and practices used to disrupt, interrogate, expose and transform the complex and oppressive social forces contributing to the victimisation of Indigenous peoples.

[ii] We are aware that the term victim "is a word that evokes strong images of submissiveness, pain, loss of control and defeat" (Rock 2012, p. 41); images that fail to capture the enduring resilience, resistance and strength of Indigenous peoples. Following Cornel West (1993 cited in Agozino 1997, p. 18), we reject the notion of passive victimhood; rather we assert the notion of victims as survivors who possess individual agency and "who fight militantly against victimization" (Agozino 1997, p. 18).

[iii] Pollack (2013, p. 104) notes that the victimisation-criminalisation continuum "challenged the prevailing victim-offender dichotomy by conceptualizing women's law-breaking as resistance to gender oppression and violence. The underlying assertion was that these coping strategies often propelled women into situations that put them at risk of being criminalized". (See also Balfour 2012).

[iv] The NT Emergency Response, initiated in 2006 and with a raft of legislation passed in 2007, used the army, social and welfare workers, and police to impose significant controls on many Aboriginal communities in the NT. This was claimed by the government of the day, led by Prime Minister John

Howard, to be necessary to manage behaviour and respond to the victimisation of Aboriginal women and children.

[v] ABS data is available on the number of Aboriginal men and women in NT prisons for 2010-2012. During this period the number of Aboriginal men imprisoned increased by 24%; for Aboriginal women the increase was 59% (ABS, 2010, Supplementary Data Cubes, Table 13; ABS, 2012, Supplementary Data Cubes, Table 13).

[vi] We take the phrase from de Sousa Santos, who points to the colonialist nature of the modern world system; one of the implications of which is that the end of colonialism (in its official form) has not meant the end of colonial relations; the latter go on "reproducing themselves as racist disqualifications of the other" (de Sousa Santos in Dalea and Robertson 2004, p. 159).